

# **EXHIBIT A**

# **EXHIBIT A**

**(Summons and Complaint)**



**Service of Process  
Transmittal**

10/01/2021

CT Log Number 540340818

**TO:** John Sullivan, Corporate Counsel  
Costco Wholesale Corporation  
LEGAL DEPT., 999 LAKE DRIVE  
ISSAQUAH, WA 98027-

**RE: Process Served in Delaware**

**FOR:** Costco Wholesale Corporation (Domestic State: WA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

<b>TITLE OF ACTION:</b>	Re: KRISTINA A. BIENEK, an individual // To: Costco Wholesale Corporation
<b>DOCUMENT(S) SERVED:</b>	--
<b>COURT/AGENCY:</b>	None Specified Case # A21838724C
<b>NATURE OF ACTION:</b>	Product Liability Litigation - Manufacturing Defect
<b>ON WHOM PROCESS WAS SERVED:</b>	The Corporation Trust Company, Wilmington, DE
<b>DATE AND HOUR OF SERVICE:</b>	By Process Server on 10/01/2021 at 12:28
<b>JURISDICTION SERVED :</b>	Delaware
<b>APPEARANCE OR ANSWER DUE:</b>	None Specified
<b>ATTORNEY(S) / SENDER(S):</b>	None Specified
<b>ACTION ITEMS:</b>	CT has retained the current log, Retain Date: 10/01/2021, Expected Purge Date: 10/06/2021  Image SOP  Email Notification, Nicola Merrett nmerrett@costco.com  Email Notification, John Sullivan jsullivan@costco.com  Email Notification, Joanne Hallenbeck jhallenbeck@costco.com
<b>REGISTERED AGENT ADDRESS:</b>	The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801  866-665-5799 SouthTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



## PROCESS SERVER DELIVERY DETAILS

**Date:** Fri, Oct 1, 2021  
**Server Name:** Wilmington Drop Serve  
  
**Entity Served** Costco Wholesale Corp.  
**Case Number** A21838724C  
**Jurisdiction** DE



Electronically Issued  
7/30/2021 11:52 AM

**SUMM**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KRISTINA A. BIENEK, an individual;

Plaintiffs,

vs.

AFFINITYLIFESTYLES.COM, INC. d/b/a REAL  
WATER, a Nevada corporation; REAL WATER INC., a  
Delaware Corporation; COSTCO WHOLESALE CORP., a  
Delaware Corporation; MAPLEBEAR, INC. d/b/a  
INSTACART, a Delaware Corporation; DOES 2 through  
10, inclusive; ROE CORPORATIONS 11 through 20,  
inclusive; and ABC LIMITED LIABILITY COMPANIES  
21 through 30, inclusive,

Defendants

CASE NO.: A-21-838724-C

DEPT NO.:

**SUMMONS TO COSTCO WHOLESALE CORP..**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR  
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.  
TO THE DEFENDANT: COSTCO WHOLESALE CORP.**

A civil Complaint has been filed by the Plaintiff against you for the relief as set forth in the Complaint.

1. If you wish to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.


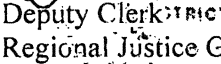
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of  
NETTLES | MORRIS

/s/Andréa L. Vieira  
Andréa L. Vieira, Esq., Nevada Bar #15667  
Attorney for Plaintiff  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Telephone: (702) 434-8282

**STEVEN D. GRIERSON  
CLERK OF THE COURT**

  
Deputy Clerk:  Date **7/30/2021**  
Regional Justice Center  
200 East Lewis Avenue  
Las Vegas, Nevada 89155

Demond Palmer

**NOTE:** When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure 4(b).

STATE OF \_\_\_\_\_ )  
 )  
 COUNTY OF \_\_\_\_\_ )

ss:

**AFFIDAVIT OF SERVICE**

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint,

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by:

**(Affiant must complete the appropriate paragraph)**

1. Delivering and leaving a copy with the Defendant at (state address) \_\_\_\_\_.
2. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the defendant's usual place of abode located at (state address) \_\_\_\_\_.

(Use paragraph 3 for service upon agent, completing A or B)

3. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_.
- a. With \_\_\_\_\_, as \_\_\_\_\_ an agent lawfully designated by statute to accept service of process;
- b. With \_\_\_\_\_, pursuant to NRS § 14.020 as a persona of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (check appropriate method):

\_\_\_\_ Ordinary mail  
 \_\_\_\_ Certified mail, return receipt requested  
 \_\_\_\_ Registered mail, return receipt requested

addressed to the defendant \_\_\_\_\_ at Defendant's last known address which is (state address) \_\_\_\_\_.

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Signature of person making service

\_\_\_\_\_  
**NOTARY PUBLIC** in and for the  
 County of \_\_\_\_\_  
 State of Nevada

Electronically Filed  
7/30/2021 11:52 AM  
Steven D. Grierson  
CLERK OF THE COURT



CASE NO: A-21-838724-C  
Department 5

**COMP**

BRIAN D. NETTLES, ESQ.

Nevada Bar No. 7462

CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 11218

ANDRÉA L. VIEIRA, ESQ.

Nevada Bar No. 15667

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*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KRISTINA A. BIENEK, an individual;

Plaintiffs,

vs.

AFFINITYLIFESTYLES.COM, INC. d/b/a  
REAL WATER, a Nevada corporation;  
REAL WATER INC., a Delaware  
Corporation; COSTCO WHOLESALE  
CORP., a Delaware Corporation;  
MAPLEBEAR, INC. d/b/a INSTACART, a  
Delaware Corporation; DOES 2 through 10,  
inclusive; ROE CORPORATIONS 11  
through 20, inclusive; and ABC LIMITED  
LIABILITY COMPANIES 21 through 30,  
inclusive,

Defendants.

CASE NO.:

DEPT NO.:

**COMPLAINT**

Plaintiff, KRISTINA A. BIENEK, by and through her counsel, Brian D. Nettles, Esq.,  
Christian M. Morris, Esq., and Andréa L. Vieira, Esq., of the law firm NETTLES | MORRIS, and  
for her causes of action against Defendants, and each of them, hereby complains and alleges as  
follows:

///

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### STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this action pursuant to Art. VI Sec. 6 of the Nevada Constitution, NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds \$15,000.00.

2. Jurisdiction by this Court is proper over Defendants in this action because each Defendant has done and continues to do business in the State of Nevada, including, but not limited to, selling toxic, unsafe, and harmful bottled water products to Nevada residents in violation of Nevada laws.

3. Plaintiff bought the toxic, unsafe, and harmful products from Defendants while she resided in Clark County, Nevada.

4. Additionally, Plaintiff currently resides in Clark County, Nevada.

### PARTIES

5. Plaintiff KRISTINA A. BIENEK is, and at all relevant times was, an individual residing in Clark County, Nevada.

6. Upon information and belief, Defendant AFFINITYLIFESTYLES.COM, INC. d/b/a REAL WATER (hereinafter "Affinity") is, and at all relevant times was, a Nevada Corporation doing business in Clark County, Nevada as "Real Water" making and selling several "Real Water" products, including bottled water.

7. Upon information and belief, Defendant REAL WATER INC. (hereinafter "RWI") is, and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada making and selling several "Real Water" products, including bottled water.

8. Upon information and belief, Defendant COSTCO WHOLESALE CORP. (hereinafter "Costco") is and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada selling several "Real Water" products, including bottled water.

9. Upon information and belief, Defendant MAPLEBEAR INC. d/b/a INSTACART (hereinafter "Instacart") is, and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada selling several "Real Water" products, including bottled water.



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10. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants DOES 2 through 10, ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30 ("Does/Roe/ABC"), are unknown to Plaintiffs at this time, whom therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiffs will amend this Complaint accordingly.

11. On information and belief, Doe/Roe/ABC Defendants participated in the design, construction, maintenance, ownership, management, control, operation, care, and/or upkeep of the Subject Premises; Doe/Roe/ABC Defendants include, but are not limited to, owners, operators, occupiers, lessees, managers, manufacturers, developers, producers, general contractors, subcontractors, security companies, maintenance companies, material providers, equipment providers, architects, designers, engineers, governmental authorities, insurers, lenders, investors, and their agents, servants, representatives, employees, partners, joint venturers, related companies, subsidiaries, parents, affiliates, predecessors, partners and/or successors in interest.

12. On information and belief, Does/Roe/ABC are responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

13. Between August 2019 and April 2020, Plaintiff purchased, and consumed bottled water labeled as "Real Water."

14. Plaintiff purchased all the "Real Water" she consumed from Defendant Costco via Defendant Instacart, which provides grocery delivery services.

15. Soon after beginning to consume "Real Water," Plaintiff began to feel very sick, developing palpitation, increased heart rate, nausea, cognitive challenges, and weakness.

16. On August 24, 2019, Plaintiff went to the emergency room at St. Rose Dominican Hospital-Sahara Campus in Las Vegas, NV and was found to have elevated liver enzymes.



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17. When liver cells are damaged, they release enzymes into the bloodstream. High levels of liver enzymes in the blood can signify a liver problem.

18. Plaintiff's treating doctors could not determine a cause for the spike of liver enzymes in her bloodstream.

19. Not knowing that Real Water was the source of her sickness, Plaintiff continued to buy and consume "Real Water."

20. In the following months, Plaintiff continued to experience the aforementioned symptoms and underwent several diagnostic tests in search for the cause of her sickness and elevated liver enzymes.

21. In the weeks leading up January 2020, Plaintiff's symptoms increased in severity. She additionally began to experience jaundice, increased confusion, malaise, and poor appetite.

22. On January 2, 2020, Plaintiff was found to have extremely elevated liver enzymes and was diagnosed with acute liver failure.

23. Plaintiff was never diagnosed with any underlying conditions—her doctors could not figure out why an otherwise healthy forty-six-year-old woman was experiencing these enzyme spikes.

24. Upon information and belief, Plaintiff's liver injury was caused by her consumption of Defendants' bottled water products.

25. Plaintiff relied upon the Defendants' respective misleading representations and omissions regarding the safety and health benefits of the bottled water product, including the lack of toxins and/or other contaminants, prior to her purchases and consumption of the product.

26. Plaintiff purchased Defendants' water products because she believed that they did not contain elevated levels of toxins and/or other harmful contaminants, were safe for consumption, and provided health benefits when consumed.

27. Plaintiff never would have purchased or consumed Defendants' bottled water products had she known that Defendants' bottled water contained toxins and/or other harmful contaminants that would cause severe bodily injury including, but not limited to, liver injury.

28. ///

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**REAL WATER**

28. Upon information and belief, Real Water is sold at Sprouts, Whole Foods, Costco, and online through Amazon, Instacart, and other grocery delivery services.

29. Defendants make multiple false and/or misleading health related claims on the labeling of its bottled water product, including, but not limited to, “Real Water Strives to be the healthiest drinking water available today”, “It can help your body to become more alkalized to improve your health,” and “Transform yourself with real water!”

30. Plaintiff relied on these misleading health representations when she decided to purchase Real Water.

31. The safety of a consumer product, such as Defendants’ bottled water, is of the utmost importance to consumers such as Plaintiff.

32. Defendants know that consumers, such as Plaintiff, would not purchase consumer products, such as Defendants’ bottled water, that are toxic and unsafe for consumption.

33. As such, Defendants know that the safety of their bottled water product is a material fact to consumers, and thus, the presence of toxins and/or other harmful contaminants in their water is a material fact to consumers, such as Plaintiff.

34. Manufacturers of consumer products (such as Defendants Affinity and RWI) and sellers (such as Defendants Costco and Instacart) hold a special position of public trust. Consumers believe that they would not manufacture and/or sell unsafe/harmful products.

35. By putting the toxic products in the stream of commerce, Defendants put consumers, including Plaintiff, in unnecessary danger.

36. On information and belief, there is an ongoing investigation by the Food and Drug Administration (“FDA”) and Southern Nevada Health District (“SNHD”) regarding numerous liver injury cases in Nevada and around the United States that were potentially caused by the consumption of Real Water.

37. The FDA, through its website, is recommending that “consumers, restaurants, distributors, and retailers” not “drink, cook with, sell, or serve ‘Real Water’”.

38. Plaintiff brings this action seeking recovery for the damages she suffered as a

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1 result of negligence, misrepresentations, omissions, and deceptions by Defendants Affinity and  
 2 RWI, and against Defendants Costco and Instacart for placing the toxic products in the stream  
 3 of commerce.

4 **FIRST CAUSE OF ACTION**  
 5 **(Strict Liability – Failure to Warn Against All Defendants)**

6 39. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
 7 as though fully set forth herein.

8 40. Bottled water, which was manufactured by Defendants Affinity and RWI and sold  
 9 by all Defendants was defective and unreasonably dangerous. Defendants failed to warn  
 10 consumers, including Plaintiff, about elevated levels of toxins and/or other harmful contaminants  
 11 in their products, the existence of which Defendants either knew or should have known about.

12 41. If adequately warned, Plaintiff would have taken precautions to avoid injury.

13 42. The Nevada Supreme Court has held that anybody “who places upon the market  
 14 a bottled beverage in a condition dangerous for use must be held strictly liable to the ultimate  
 15 user for injuries resulting from such use, although the seller has exercised all reasonable care,  
 16 and the user has not entered into a contractual relation with him.” *Shoshone Coca-Cola Bottling*  
 17 *Co. v. Dolinski*, 82 Nev. 439, 441 (1966). This applies to the “manufacturer and distributor of a  
 18 bottled beverage.” *Id.* at 442.

19 43. Furthermore, one who causes a product to “enter the stream of commerce” or  
 20 “passes it on” in the stream of commerce can be held strictly liable for any harm caused by  
 21 defects in the product. This includes manufacturers, suppliers, retailers, distributors, lessors,  
 22 assemblers of component parts into finished products and, in some cases, contractors. *See*  
 23 *Alvarez v. Felker Manufacturing*, 230 Cal.App.2d 987 (1964).

24 44. Defendants Costco and Instacart were retailers and distributors of Defendants  
 25 Affinity’s and RWI’s bottled water, thus causing it to enter the stream of commerce.  
 26 Accordingly, Defendants Costco and Instacart are also strictly liable for the injuries Plaintiff  
 27 sustained by consuming Affinity’s and RWI’s toxic product.

28 45. As a direct and proximate result of the defective nature of Defendants Affinity’s  
 and RWI’s bottled water products, as well as Defendants Costco’s and Instacart’s distribution of

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1 the defective product, and their lack of warning regarding the same, Plaintiff has suffered  
2 permanent and severe medical injuries including severe liver damage, severe pain and suffering,  
3 loss of normal life, and disability, all to Plaintiff's damage in a sum in excess of \$15,000.00.

4 46. As a direct and proximate result of acts as alleged herein, Plaintiff received  
5 medical and other treatments for injuries sustained to body, limbs, organs and nervous systems,  
6 all or some of which conditions may be permanent and disabling and, all to Plaintiff's damage  
7 in a sum in excess of \$15,000.00. That said services, care, and treatment are continuing and shall  
8 continue in the future.

9 47. In carrying out its responsibilities for the design, manufacturer, testing, labeling,  
10 distribution, marketing, and sale of their bottled water, Defendants acted with fraud, malice,  
11 express or implied, oppression and/or conscious disregard of the safety of others. As a direct and  
12 proximate result of the Defendants' conduct, Plaintiff is entitled to an award of punitive damages.

13 48. As a direct and proximate result of Defendants' extreme and outrageous conduct,  
14 Plaintiff suffered substantial physical injuries, harms and losses including, but not limited to  
15 severe liver damage, multiple emergency room visits and diagnostic tests, severe pain and  
16 suffering, loss of normal life, and disability, all to Plaintiff's damage in a sum in excess of  
17 \$15,000.00.

18 49. As a direct and proximate result of the acts of Defendants, and each of them, as  
19 alleged herein, Plaintiff has had to retain the services of the law firm of NETTLES | MORRIS  
20 to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred  
21 therein.

## 22 **SECOND CAUSE OF ACTION**

### 23 **(Breach of Implied Warranty of Merchantability Against All Defendants)**

24 50. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
25 as though fully set forth herein.

26 51. An implied warranty of merchantability existed between Plaintiff and Defendants  
27 Affinity, RWI, Costco, and Instacart under Nevada Law, i.e., NRS 104.2314.

28 52. Defendants sold bottled water products with toxins and/or other harmful  
contaminants to Plaintiff.

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53. Defendants breached the implied warranty of merchantability when they sold contaminated, unsafe bottled water products to Plaintiff.

54. As a direct result of Defendants' breach of implied warranty of merchantability, Plaintiff has sustained the injuries and damages as alleged herein.

55. As a direct and proximate result of Defendants' breaches as alleged herein, Plaintiff has suffered permanent and severe medical injuries including severe liver damage, severe pain and suffering, loss of normal life, and disability as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

56. As a direct and proximate result of Defendants' breaches as alleged herein, Plaintiff has and will incur past, present, and future medical expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

57. As a direct and proximate result of Defendants' breaches as alleged herein, Plaintiff has incurred permanent injuries as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

58. As a direct and proximate result of the acts of Defendants, and each of them, as alleged herein, Plaintiff has had to retain the services of the law firm of NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

### **THIRD CAUSE OF ACTION**

#### **(Negligence *Per Se* - Adulterated Product Against All Defendants)**

59. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as though fully set forth herein.

60. NRS 585.300 provides in pertinent part that "[a] good shall be deemed to be adulterated if ... [i]t bears or contains any poisonous or deleterious substance which may render it injurious to health unless the substance is not as added substance and the quantity of the substance does not ordinarily render it injurious to health..."

61. NRS 585.310 provides in pertinent part that "[a] good shall be deemed to be adulterated ... [i]f damage or inferiority has been concealed in any manner..."



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1           62.     NRS 585.320 provides in pertinent part that “[a] good shall be deemed to be  
2 adulterated if it falls below the standard of purity, quality or strength which it purports or is  
3 represented to possess.”

4           63.     NRS 585.520 provides in pertinent part that “[t]he following acts and the causing  
5 thereof within the State of Nevada are hereby prohibited: ... [t]he manufacture, sale or delivery,  
6 holding or offering for sale of any good, drug, device or cosmetic that is adulterated or  
7 misbranded.”

8           64.     NRS 585.550 provides that a person who violates the foregoing provisions is  
9 “guilty of a gross misdemeanor.”

10          65.     The Nevada Supreme Court has held that knowledge is not a necessary element  
11 for a violation of NRS 585.520. *See Duchess Business Services, Inc. v. Nevada State Board of*  
12 *Pharmacy*, 181 P.2d 1159, 1169 (2008) (“we conclude that NRS 585.520(1) contains no  
13 knowledge requirement and that liability may be imposed under that section absent  
14 consciousness of any wrongdoing.”).

15          66.     At all times relevant hereto, Defendants owed Plaintiff a duty to act in compliance  
16 with the laws of the State of Nevada, including but not limited to one or more statutes contained  
17 in the Nevada Revised Statutes, including but not limited to NRS Chapter 585.

18          67.     By failing to obey and comply with the Nevada Revised Statutes, by adulterating  
19 its bottled water products, placing its bottled water products for sale, and/or placing its bottled  
20 water products in the stream of commerce, Defendants violated Nevada law.

21          68.     Defendants’ violation of Nevada law was the direct and proximate cause of  
22 Plaintiff’s injuries and damages as alleged herein.

23          69.     Nevada laws, rules, and regulations contained in the Nevada Revised Statutes exist  
24 to prevent incidents such as the one complained of herein and to protect persons such as the  
25 Plaintiff and others similarly situated.

26          70.     By violating Nevada laws, statutes, codes, rules, ordinances, and/or regulations,  
27 Defendants were negligent *per se*.  
28

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71. As a direct and proximate result of the Defendants' negligence *per se*, Plaintiff sustained the injuries, damages, and losses as set forth herein.

72. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has suffered and will continue to suffer significant physical injury, pain, suffering, and extreme and severe mental anguish and emotional distress.

73. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has suffered permanent and severe medical injuries including severe liver damage, severe pain and suffering, loss of normal life, and disability as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

74. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has and will incur past, present, and future medical expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

75. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

76. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has had to retain the services of the law firm of NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

**FOURTH CAUSE OF ACTION  
(Negligence Against All Defendants)**

77. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as though fully set forth herein.

78. Defendants owed a duty of care to Plaintiff in the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of RWI's and Affinity's bottled water products.

79. Defendants RWI and Affinity breached this duty of care in contaminating their bottled water products, and/or allowing their bottled water products to be contaminated with toxins and/or other harmful contaminants unsafe for human consumption.



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1 80. Defendants Affinity and RWI breached their duty of care by failing to warn  
2 consumers that their bottled water products were contaminated.

3 81. Defendants Affinity, RWI, Costco, and Instacart breached their duty of care by  
4 placing the contaminated bottled water products for sale, and/or placing the contaminated bottled  
5 water products in the stream of commerce.

6 82. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
7 each of them, as alleged herein Plaintiff has suffered permanent and severe medical injuries  
8 including severe liver damage, severe pain and suffering, loss of normal life, and disability as  
9 alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

10 83. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
11 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
12 expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

13 84. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
14 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
15 all to Plaintiff's damage in a sum in excess of \$15,000.00.

16 85. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
17 each of them, as alleged herein Plaintiff has had to retain the services of the law firm of  
18 NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable  
19 attorney's fees incurred therein.

#### 20 **FIFTH CAUSE OF ACTION**

21 **(Violation of Nevada Deceptive Trade Practices Act – NRS §§ 598.0903 to 598.0999**  
22 **Against Defendants RWI and Affinity)**

23 86. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
24 as though fully set forth herein.

25 87. At all times relevant herein, Defendants Affinity and RWI violated the Nevada  
26 Deceptive Trade Practices Act, §§ 598.0903 to 598.0999, by representing to its Nevada  
27 customers and consumers that their manufactured and sold bottled water products were safe and  
28 failed to take into consideration the damages consumers throughout Nevada would sustain  
through the use of Defendants' unsafe products.

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88. Defendants Affinity and RWI made false or misleading statements of fact concerning the safety of their products (“the healthiest drinking water available today”) and intentionally omitted reference to the dangerous toxins and/or other harmful contaminants contained in their products in violation of NRS 598.0915(13), and otherwise made knowingly false representations in their communications with Nevada consumers by representing that their products were safe.

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1 unreasonably dangerous because their elevated levels of toxins and/or other harmful  
2 contaminants rendered them unsuited to perform as reasonably expected in light of their nature  
3 and intended function.

4 96. Defendants Affinity's and RWI's bottled water products are more dangerous than  
5 would be contemplated by the ordinary user having the ordinary knowledge available in the  
6 community given the presence of toxins and/or other harmful contaminants therein.

7 97. Plaintiff was exposed to Defendants Affinity's and RWI's bottled water products  
8 through retail purchases (from Defendants Costco and Instacart) and consumption of the same,  
9 as was intended by Defendants Affinity and RWI.

10 98. Safer alternative ingredients, materials, and/or designs were available at all  
11 relevant times, beginning when Plaintiff first purchased Defendants Affinity's and RWI's bottled  
12 water products.

13 99. As a direct and proximate result of the elevated levels of toxins and/or other  
14 harmful contaminants in Defendants Affinity's and RWI's bottled water products, Plaintiff has  
15 suffered permanent and severe medical injuries including severe liver damage, severe pain and  
16 suffering, loss of normal life, and disability as alleged herein, and all to Plaintiff's damage in a  
17 sum in excess of \$15,000.00.

18 100. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
19 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
20 expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

21 101. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
22 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
23 all to Plaintiff's damage in a sum in excess of \$15,000.00.

24 102. In carrying out its responsibilities for the design, manufacture, testing, labeling,  
25 distribution, marketing, and sale of their bottled water products, Defendants acted with fraud,  
26 malice, express or implied, oppression and/or conscious disregard of the safety of others. As a  
27 direct and proximate result of the conduct of Defendants, Plaintiff is entitled to punitive damages  
28 in excess of this Court's jurisdictional minimum.

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103. As the actual, direct, proximate, and legal result of the acts of Defendants, and each of them, as alleged herein Plaintiff has had to retain the services of the law firm of NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

**WHEREFORE**, Plaintiff expressly reserving the right to amend this complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays for judgment against the Defendants, and each of them, as follows:

1. For general and special damages in excess of \$15,000;
2. For past and future medical expenses in a sum to be determined at trial;
3. For general damages for pain, suffering, mental distress, anguish and fear, to be determined at trial;
4. For punitive damages pursuant to NRS Chapter 42;
5. For a determination that Defendants were negligent *per se*;
6. For any and all pre- and post-judgment interest allowed under the law;
7. For reasonable attorney's fees plus costs of suit, and
8. For such other and further relief as the court may deem just and proper.

DATED this 30<sup>th</sup> day of July, 2021.

NETTLES | MORRIS

/s/ Andréa L. Vieira

BRIAN D. NETTLES, ESQ.

Nevada Bar No. 7462

CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 11218

ANDRÉA L. VIEIRA, ESQ.

Nevada Bar No. 15667

1389 Galleria Drive, Suite 200

Henderson, Nevada 89014

*Attorneys for Plaintiff*

Electronically Issued  
7/30/2021 11:52 AM

SUMM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KRISTINA A. BIENEK, an individual;

Plaintiffs,

vs.

AFFINITYLIFESTYLES.COM, INC. d/b/a REAL  
WATER, a Nevada corporation; REAL WATER INC., a  
Delaware Corporation; COSTCO WHOLESALE CORP., a  
Delaware Corporation; MAPLEBEAR, INC. d/b/a  
INSTACART, a Delaware Corporation; DOES 2 through  
10, inclusive; ROE CORPORATIONS 11 through 20,  
inclusive; and ABC LIMITED LIABILITY COMPANIES  
21 through 30, inclusive,

Defendants

CASE NO.: A-21-838724-C

DEPT NO.:

**SUMMONS TO MAPLEBEAR, INC. d/b/a  
INSTACART.**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR  
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT: MAPLEBEAR, INC. d/b/a INSTACART**

A civil Complaint has been filed by the Plaintiff against you for the relief as set forth in the Complaint.

1. If you wish to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

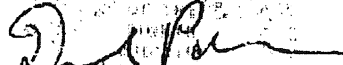
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of  
NETTLES | MORRIS

/s/Andréa L. Vieira  
Andréa L. Vieira, Esq., Nevada Bar #15667  
Attorney for Plaintiff  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Telephone: (702) 434-8282

**STEVEN D. GRIERSON  
CLERK OF THE COURT**

 7/30/2021

Deputy Clerk Date  
Regional Justice Center  
200 East Lewis Avenue  
Las Vegas, Nevada 89155

Demond Palmer

**NOTE:** When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure 4(b).



STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

ss:

**AFFIDAVIT OF SERVICE**

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint,

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by:

**(Affiant must complete the appropriate paragraph)**

1. Delivering and leaving a copy with the Defendant at (state address) \_\_\_\_\_.
2. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the defendant's usual place of abode located at (state address) \_\_\_\_\_.

(Use paragraph 3 for service upon agent, completing A or B)

3. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_.
  - a. With \_\_\_\_\_, as \_\_\_\_\_ an agent lawfully designated by statute to accept service of process;
  - b. With \_\_\_\_\_, pursuant to NRS § 14.020 as a persona of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (check appropriate method):

\_\_\_\_ Ordinary mail  
\_\_\_\_ Certified mail, return receipt requested  
\_\_\_\_ Registered mail, return receipt requested

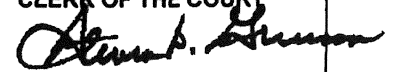
addressed to the defendant \_\_\_\_\_ at Defendant's last known address which is (state address) \_\_\_\_\_.

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
**NOTARY PUBLIC** in and for the  
County of \_\_\_\_\_  
State of Nevada

Electronically Filed  
7/30/2021 11:52 AM  
Steven D. Grierson  
CLERK OF THE COURT



CASE NO: A-21-838724-C  
Department 5

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**COMP**

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CHRISTIAN M. MORRIS, ESQ.

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*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KRISTINA A. BIENEK, an individual;

Plaintiffs,

vs.

AFFINITYLIFESTYLES.COM, INC. d/b/a  
REAL WATER, a Nevada corporation;  
REAL WATER INC., a Delaware  
Corporation; COSTCO WHOLESALE  
CORP., a Delaware Corporation;  
MAPLEBEAR, INC. d/b/a INSTACART, a  
Delaware Corporation; DOES 2 through 10,  
inclusive; ROE CORPORATIONS 11  
through 20, inclusive; and ABC LIMITED  
LIABILITY COMPANIES 21 through 30,  
inclusive,

Defendants.

CASE NO.:

DEPT NO.:

**COMPLAINT**

Plaintiff, KRISTINA A. BIENEK, by and through her counsel, Brian D. Nettles, Esq.,  
Christian M. Morris, Esq., and Andréa L. Vieira, Esq., of the law firm NETTLES | MORRIS, and  
for her causes of action against Defendants, and each of them, hereby complains and alleges as  
follows:

///



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**STATEMENT OF JURISDICTION AND VENUE**

1. The Eighth Judicial District Court has jurisdiction over this action pursuant to Art. VI Sec. 6 of the Nevada Constitution, NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds \$15,000.00.

2. Jurisdiction by this Court is proper over Defendants in this action because each Defendant has done and continues to do business in the State of Nevada, including, but not limited to, selling toxic, unsafe, and harmful bottled water products to Nevada residents in violation of Nevada laws.

3. Plaintiff bought the toxic, unsafe, and harmful products from Defendants while she resided in Clark County, Nevada.

4. Additionally, Plaintiff currently resides in Clark County, Nevada.

**PARTIES**

5. Plaintiff KRISTINA A. BIENEK is, and at all relevant times was, an individual residing in Clark County, Nevada.

6. Upon information and belief, Defendant AFFINITYLIFESTYLES.COM, INC. d/b/a REAL WATER (hereinafter "Affinity") is, and at all relevant times was, a Nevada Corporation doing business in Clark County, Nevada as "Real Water" making and selling several "Real Water" products, including bottled water.

7. Upon information and belief, Defendant REAL WATER INC. (hereinafter "RWI") is, and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada making and selling several "Real Water" products, including bottled water.

8. Upon information and belief, Defendant COSTCO WHOLESALE CORP. (hereinafter "Costco") is and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada selling several "Real Water" products, including bottled water.

9. Upon information and belief, Defendant MAPLEBEAR INC. d/b/a INSTACART (hereinafter "Instacart") is, and at all relevant times was, a Delaware Corporation doing business in Clark County, Nevada selling several "Real Water" products, including bottled water.

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10. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants DOES 2 through 10, ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30 ("Does/Roe/ABC"), are unknown to Plaintiffs at this time, whom therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiffs will amend this Complaint accordingly.

11. On information and belief, Doe/Roe/ABC Defendants participated in the design, construction, maintenance, ownership, management, control, operation, care, and/or upkeep of the Subject Premises; Doe/Roe/ABC Defendants include, but are not limited to, owners, operators, occupiers, lessees, managers, manufacturers, developers, producers, general contractors, subcontractors, security companies, maintenance companies, material providers, equipment providers, architects, designers, engineers, governmental authorities, insurers, lenders, investors, and their agents, servants, representatives, employees, partners, joint venturers, related companies, subsidiaries, parents, affiliates, predecessors, partners and/or successors in interest.

12. On information and belief, Does/Roe/ABC are responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

13. Between August 2019 and April 2020, Plaintiff purchased, and consumed bottled water labeled as "Real Water."

14. Plaintiff purchased all the "Real Water" she consumed from Defendant Costco via Defendant Instacart, which provides grocery delivery services.

15. Soon after beginning to consume "Real Water," Plaintiff began to feel very sick, developing palpitation, increased heart rate, nausea, cognitive challenges, and weakness.

16. On August 24, 2019, Plaintiff went to the emergency room at St. Rose Dominican Hospital-Sahara Campus in Las Vegas, NV and was found to have elevated liver enzymes.

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1           17.     When liver cells are damaged, they release enzymes into the bloodstream. High  
2 levels of liver enzymes in the blood can signify a liver problem.

3           18.     Plaintiff's treating doctors could not determine a cause for the spike of liver  
4 enzymes in her bloodstream.

5           19.     Not knowing that Real Water was the source of her sickness, Plaintiff continued  
6 to buy and consume "Real Water."

7           20.     In the following months, Plaintiff continued to experience the aforementioned  
8 symptoms and underwent several diagnostic tests in search for the cause of her sickness and  
9 elevated liver enzymes.

10          21.     In the weeks leading up January 2020, Plaintiff's symptoms increased in severity.  
11 She additionally began to experience jaundice, increased confusion, malaise, and poor appetite.

12          22.     On January 2, 2020, Plaintiff was found to have extremely elevated liver enzymes  
13 and was diagnosed with acute liver failure.

14          23.     Plaintiff was never diagnosed with any underlying conditions— her doctors could  
15 not figure out why an otherwise healthy forty-six-year-old woman was experiencing these  
16 enzyme spikes.

17          24.     Upon information and belief, Plaintiff's liver injury was caused by her  
18 consumption of Defendants' bottled water products.

19          25.     Plaintiff relied upon the Defendants' respective misleading representations and  
20 omissions regarding the safety and health benefits of the bottled water product, including the  
21 lack of toxins and/or other contaminants, prior to her purchases and consumption of the product.

22          26.     Plaintiff purchased Defendants' water products because she believed that they did  
23 not contain elevated levels of toxins and/or other harmful contaminants, were safe for  
24 consumption, and provided health benefits when consumed.

25          27.     Plaintiff never would have purchased or consumed Defendants' bottled water  
26 products had she known that Defendants' bottled water contained toxins and/or other harmful  
27 contaminants that would cause severe bodily injury including, but not limited to, liver injury.

28     ///

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**REAL WATER**

28. Upon information and belief, Real Water is sold at Sprouts, Whole Foods, Costco, and online through Amazon, Instacart, and other grocery delivery services.

29. Defendants make multiple false and/or misleading health related claims on the labeling of its bottled water product, including, but not limited to, “Real Water Strives to be the healthiest drinking water available today”, “It can help your body to become more alkalized to improve your health,” and “Transform yourself with real water!”

30. Plaintiff relied on these misleading health representations when she decided to purchase Real Water.

31. The safety of a consumer product, such as Defendants’ bottled water, is of the utmost importance to consumers such as Plaintiff.

32. Defendants know that consumers, such as Plaintiff, would not purchase consumer products, such as Defendants’ bottled water, that are toxic and unsafe for consumption.

33. As such, Defendants know that the safety of their bottled water product is a material fact to consumers, and thus, the presence of toxins and/or other harmful contaminants in their water is a material fact to consumers, such as Plaintiff.

34. Manufacturers of consumer products (such as Defendants Affinity and RWI) and sellers (such as Defendants Costco and Instacart) hold a special position of public trust. Consumers believe that they would not manufacture and/or sell unsafe/harmful products.

35. By putting the toxic products in the stream of commerce, Defendants put consumers, including Plaintiff, in unnecessary danger.

36. On information and belief, there is an ongoing investigation by the Food and Drug Administration (“FDA”) and Southern Nevada Health District (“SNHD”) regarding numerous liver injury cases in Nevada and around the United States that were potentially caused by the consumption of Real Water.

37. The FDA, through its website, is recommending that “consumers, restaurants, distributors, and retailers” not “drink, cook with, sell, or serve ‘Real Water’”.

38. Plaintiff brings this action seeking recovery for the damages she suffered as a

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1 result of negligence, misrepresentations, omissions, and deceptions by Defendants Affinity and  
 2 RWI, and against Defendants Costco and Instacart for placing the toxic products in the stream  
 3 of commerce.

4 **FIRST CAUSE OF ACTION**  
 5 **(Strict Liability – Failure to Warn Against All Defendants)**

6 39. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
 7 as though fully set forth herein.

8 40. Bottled water, which was manufactured by Defendants Affinity and RWI and sold  
 9 by all Defendants was defective and unreasonably dangerous. Defendants failed to warn  
 10 consumers, including Plaintiff, about elevated levels of toxins and/or other harmful contaminants  
 11 in their products, the existence of which Defendants either knew or should have known about.

12 41. If adequately warned, Plaintiff would have taken precautions to avoid injury.

13 42. The Nevada Supreme Court has held that anybody “who places upon the market  
 14 a bottled beverage in a condition dangerous for use must be held strictly liable to the ultimate  
 15 user for injuries resulting from such use, although the seller has exercised all reasonable care,  
 16 and the user has not entered into a contractual relation with him.” *Shoshone Coca-Cola Bottling*  
 17 *Co. v. Dolinski*, 82 Nev. 439, 441 (1966). This applies to the “manufacturer and distributor of a  
 18 bottled beverage.” *Id.* at 442.

19 43. Furthermore, one who causes a product to “enter the stream of commerce” or  
 20 “passes it on” in the stream of commerce can be held strictly liable for any harm caused by  
 21 defects in the product. This includes manufacturers, suppliers, retailers, distributors, lessors,  
 22 assemblers of component parts into finished products and, in some cases, contractors. *See*  
 23 *Alvarez v. Felker Manufacturing*, 230 Cal.App.2d 987 (1964).

24 44. Defendants Costco and Instacart were retailers and distributors of Defendants  
 25 Affinity’s and RWI’s bottled water, thus causing it to enter the stream of commerce.  
 26 Accordingly, Defendants Costco and Instacart are also strictly liable for the injuries Plaintiff  
 27 sustained by consuming Affinity’s and RWI’s toxic product.

28 45. As a direct and proximate result of the defective nature of Defendants Affinity’s  
 and RWI’s bottled water products, as well as Defendants Costco’s and Instacart’s distribution of



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1 the defective product, and their lack of warning regarding the same, Plaintiff has suffered  
2 permanent and severe medical injuries including severe liver damage, severe pain and suffering,  
3 loss of normal life, and disability, all to Plaintiff's damage in a sum in excess of \$15,000.00.

4 46. As a direct and proximate result of acts as alleged herein, Plaintiff received  
5 medical and other treatments for injuries sustained to body, limbs, organs and nervous systems,  
6 all or some of which conditions may be permanent and disabling and, all to Plaintiff's damage  
7 in a sum in excess of \$15,000.00. That said services, care, and treatment are continuing and shall  
8 continue in the future.

9 47. In carrying out its responsibilities for the design, manufacturer, testing, labeling,  
10 distribution, marketing, and sale of their bottled water, Defendants acted with fraud, malice,  
11 express or implied, oppression and/or conscious disregard of the safety of others. As a direct and  
12 proximate result of the Defendants' conduct, Plaintiff is entitled to an award of punitive damages.

13 48. As a direct and proximate result of Defendants' extreme and outrageous conduct,  
14 Plaintiff suffered substantial physical injuries, harms and losses including, but not limited to  
15 severe liver damage, multiple emergency room visits and diagnostic tests, severe pain and  
16 suffering, loss of normal life, and disability, all to Plaintiff's damage in a sum in excess of  
17 \$15,000.00.

18 49. As a direct and proximate result of the acts of Defendants, and each of them, as  
19 alleged herein, Plaintiff has had to retain the services of the law firm of NETTLES | MORRIS  
20 to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred  
21 therein.

## 22 **SECOND CAUSE OF ACTION**

### 23 **(Breach of Implied Warranty of Merchantability Against All Defendants)**

24 50. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
25 as though fully set forth herein.

26 51. An implied warranty of merchantability existed between Plaintiff and Defendants  
27 Affinity, RWI, Costco, and Instacart under Nevada Law, i.e., NRS 104.2314.

28 52. Defendants sold bottled water products with toxins and/or other harmful  
contaminants to Plaintiff.

53. Defendants breached the implied warranty of merchantability when they sold contaminated, unsafe bottled water products to Plaintiff.



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1           62.     NRS 585.320 provides in pertinent part that “[a] good shall be deemed to be  
2 adulterated if it falls below the standard of purity, quality or strength which it purports or is  
3 represented to possess.”

4           63.     NRS 585.520 provides in pertinent part that “[t]he following acts and the causing  
5 thereof within the State of Nevada are hereby prohibited: ... [t]he manufacture, sale or delivery,  
6 holding or offering for sale of any good, drug, device or cosmetic that is adulterated or  
7 misbranded.”

8           64.     NRS 585.550 provides that a person who violates the foregoing provisions is  
9 “guilty of a gross misdemeanor.”

10          65.     The Nevada Supreme Court has held that knowledge is not a necessary element  
11 for a violation of NRS 585.520. *See Duchess Business Services, Inc. v. Nevada State Board of*  
12 *Pharmacy*, 181 P.2d 1159, 1169 (2008) (“we conclude that NRS 585.520(1) contains no  
13 knowledge requirement and that liability may be imposed under that section absent  
14 consciousness of any wrongdoing.”).

15          66.     At all times relevant hereto, Defendants owed Plaintiff a duty to act in compliance  
16 with the laws of the State of Nevada, including but not limited to one or more statutes contained  
17 in the Nevada Revised Statutes, including but not limited to NRS Chapter 585.

18          67.     By failing to obey and comply with the Nevada Revised Statutes, by adulterating  
19 its bottled water products, placing its bottled water products for sale, and/or placing its bottled  
20 water products in the stream of commerce, Defendants violated Nevada law.

21          68.     Defendants’ violation of Nevada law was the direct and proximate cause of  
22 Plaintiff’s injuries and damages as alleged herein.

23          69.     Nevada laws, rules, and regulations contained in the Nevada Revised Statutes exist  
24 to prevent incidents such as the one complained of herein and to protect persons such as the  
25 Plaintiff and others similarly situated.

26          70.     By violating Nevada laws, statutes, codes, rules, ordinances, and/or regulations,  
27 Defendants were negligent *per se*.  
28

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1 71. As a direct and proximate result of the Defendants' negligence *per se*, Plaintiff  
2 sustained the injuries, damages, and losses as set forth herein.

3 72. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
4 each of them, as alleged herein Plaintiff has suffered and will continue to suffer significant  
5 physical injury, pain, suffering, and extreme and severe mental anguish and emotional distress.

6 73. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
7 each of them, as alleged herein Plaintiff has suffered permanent and severe medical injuries  
8 including severe liver damage, severe pain and suffering, loss of normal life, and disability as  
9 alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

10 74. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
11 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
12 expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

13 75. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
14 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
15 all to Plaintiff's damage in a sum in excess of \$15,000.00.

16 76. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
17 each of them, as alleged herein Plaintiff has had to retain the services of the law firm of  
18 NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable  
19 attorney's fees incurred therein.

20 **FOURTH CAUSE OF ACTION**  
21 **(Negligence Against All Defendants)**

22 77. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
23 as though fully set forth herein.

24 78. Defendants owed a duty of care to Plaintiff in the design, manufacture,  
25 construction, assembly, testing, labeling, distribution, marketing, and sale of RWI's and  
26 Affinity's bottled water products.

27 79. Defendants RWI and Affinity breached this duty of care in contaminating their  
28 bottled water products, and/or allowing their bottled water products to be contaminated with  
toxins and/or other harmful contaminants unsafe for human consumption.

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1 80. Defendants Affinity and RWI breached their duty of care by failing to warn  
2 consumers that their bottled water products were contaminated.

3 81. Defendants Affinity, RWI, Costco, and Instacart breached their duty of care by  
4 placing the contaminated bottled water products for sale, and/or placing the contaminated bottled  
5 water products in the stream of commerce.

6 82. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
7 each of them, as alleged herein Plaintiff has suffered permanent and severe medical injuries  
8 including severe liver damage, severe pain and suffering, loss of normal life, and disability as  
9 alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

10 83. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
11 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
12 expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

13 84. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
14 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
15 all to Plaintiff's damage in a sum in excess of \$15,000.00.

16 85. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
17 each of them, as alleged herein Plaintiff has had to retain the services of the law firm of  
18 NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable  
19 attorney's fees incurred therein.

20 **FIFTH CAUSE OF ACTION**  
21 **(Violation of Nevada Deceptive Trade Practices Act – NRS §§ 598.0903 to 598.0999**  
22 **Against Defendants RWI and Affinity)**

23 86. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
24 as though fully set forth herein.

25 87. At all times relevant herein, Defendants Affinity and RWI violated the Nevada  
26 Deceptive Trade Practices Act, §§ 598.0903 to 598.0999, by representing to its Nevada  
27 customers and consumers that their manufactured and sold bottled water products were safe and  
28 failed to take into consideration the damages consumers throughout Nevada would sustain  
through the use of Defendants' unsafe products.

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1           88. Defendants Affinity and RWI made false or misleading statements of fact  
2 concerning the safety of their products (“the healthiest drinking water available today”) and  
3 intentionally omitted reference to the dangerous toxins and/or other harmful contaminants  
4 contained in their products in violation of NRS 598.0915(13), and otherwise made knowingly  
5 false representations in their communications with Nevada consumers by representing that their  
6 products were safe.

7           89. As a direct result of Defendants’ conduct, Plaintiff has been deprived of fair and  
8 adequate bottled water products for which they paid, and to which they were fairly and lawfully  
9 entitled.

10           90. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
11 each of them, as alleged herein Plaintiff has suffered permanent and severe medical injuries  
12 including severe liver damage, severe pain and suffering, loss of normal life, and disability as  
13 alleged herein, and all to Plaintiff’s damage in a sum in excess of \$15,000.00.

14           91. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
15 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
16 expenses as alleged herein, and all to Plaintiff’s damage in a sum in excess of \$15,000.00.

17           92. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
18 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
19 all to Plaintiff’s damage in a sum in excess of \$15,000.00.

20           93. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
21 each of them, as alleged herein Plaintiff has had to retain the services of the DOLAN LAW  
22 OFFICES, P.C. and the law firm of NETTLES | MORRIS to pursue this action and is entitled to  
23 recover costs of suit and reasonable attorney’s fees incurred therein.

24                                   **SIXTH CAUSE OF ACTION**  
25                                   **(Strict Liability – Unreasonably Dangerous**  
26                                   **Against All Defendants)**

27           94. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
28 as though fully set forth herein.

29           95. Defendants Affinity’s and RWI’s bottled water products are defective and

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1 unreasonably dangerous because their elevated levels of toxins and/or other harmful  
2 contaminants rendered them unsuited to perform as reasonably expected in light of their nature  
3 and intended function.

4 96. Defendants Affinity's and RWI's bottled water products are more dangerous than  
5 would be contemplated by the ordinary user having the ordinary knowledge available in the  
6 community given the presence of toxins and/or other harmful contaminants therein.

7 97. Plaintiff was exposed to Defendants Affinity's and RWI's bottled water products  
8 through retail purchases (from Defendants Costco and Instacart) and consumption of the same,  
9 as was intended by Defendants Affinity and RWI.

10 98. Safer alternative ingredients, materials, and/or designs were available at all  
11 relevant times, beginning when Plaintiff first purchased Defendants Affinity's and RWI's bottled  
12 water products.

13 99. As a direct and proximate result of the elevated levels of toxins and/or other  
14 harmful contaminants in Defendants Affinity's and RWI's bottled water products, Plaintiff has  
15 suffered permanent and severe medical injuries including severe liver damage, severe pain and  
16 suffering, loss of normal life, and disability as alleged herein, and all to Plaintiff's damage in a  
17 sum in excess of \$15,000.00.

18 100. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
19 each of them, as alleged herein Plaintiff has and will incur past, present, and future medical  
20 expenses as alleged herein, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

21 101. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
22 each of them, as alleged herein Plaintiff has incurred permanent injuries as alleged herein, and  
23 all to Plaintiff's damage in a sum in excess of \$15,000.00.

24 102. In carrying out its responsibilities for the design, manufacture, testing, labeling,  
25 distribution, marketing, and sale of their bottled water products, Defendants acted with fraud,  
26 malice, express or implied, oppression and/or conscious disregard of the safety of others. As a  
27 direct and proximate result of the conduct of Defendants, Plaintiff is entitled to punitive damages  
28 in excess of this Court's jurisdictional minimum.



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1           103. As the actual, direct, proximate, and legal result of the acts of Defendants, and  
 2 each of them, as alleged herein Plaintiff has had to retain the services of the law firm of  
 3 NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable  
 4 attorney's fees incurred therein.

5           **WHEREFORE**, Plaintiff expressly reserving the right to amend this complaint prior to  
 6 or at the time of trial of this action, to insert those items of damage not yet fully ascertainable,  
 7 prays for judgment against the Defendants, and each of them, as follows:

- 8           1. For general and special damages in excess of \$15,000;
- 9           2. For past and future medical expenses in a sum to be determined at trial;
- 10          3. For general damages for pain, suffering, mental distress, anguish and fear, to be  
 11 determined at trial;
- 12          4. For punitive damages pursuant to NRS Chapter 42;
- 13          5. For a determination that Defendants were negligent *per se*;
- 14          6. For any and all pre- and post-judgment interest allowed under the law;
- 15          7. For reasonable attorney's fees plus costs of suit, and
- 16          8. For such other and further relief as the court may deem just and proper.

17           DATED this 30<sup>th</sup> day of July, 2021.

18                                   NETTLES | MORRIS

19                                   /s/ Andréa L. Vieira

20                                   BRIAN D. NETTLES, ESQ.

21                                   Nevada Bar No. 7462

22                                   CHRISTIAN M. MORRIS, ESQ.

23                                   Nevada Bar No. 11218

24                                   ANDRÉA L. VIEIRA, ESQ.

25                                   Nevada Bar No. 15667

26                                   1389 Galleria Drive, Suite 200

27                                   Henderson, Nevada 89014

28                                   Attorneys for Plaintiff